



Digitized by the Internet Archive
in 2010 with funding from
Lyrasis Members and Sloan Foundation

[Document G.]

BY THE SENATE,
February 25, 1854.

Read and ordered to be printed.

PETITION

OF

RICHARD WILLIAMS,

RELATIVE TO

SUIT IN CHANCERY.

(53 continued)

WARRIOR, 1919-20

1919-20, 1920-21

Continued on reverse side of page

WARRIOR

1

WARRIOR, 1919-20

WARRIOR

WARRIOR, 1919-20

PETITION.

To the Honorable the General Assembly of the State of Maryland:

The petition of Richard Williams of Montgomery county respectfully shows, that in June eighteen hundred and fifty, a bill was filed in the Court of Chancery, against him and others, by Charles B. Calvert and George H. Calvert, for the purpose, among other objects, of obtaining from him an account as collector and administrator pendente lite of the estate of Thomas Cramphin, formerly of Montgomery county. Upon this bill several subpoenas were successively issued, each of which, through no evasion or contrivance on the part of your petitioner, was returned 'non est' by the sheriff, and finally a writ, returnable to the March term, 1851, of said court, was served upon him and so returned. Under circumstances hereinafter set forth, your petitioner failed to appear according to the exigency of said writ, and in April, 1851, an interlocutory decree was obtained against him. Commissions to take proof were subsequently issued to the city of Baltimore and to Annapolis, and in May, 1853, a decree to account was passed. The Auditor of the court states an account upon the exparte evidence in the case, and on the 25th July, 1853, a final decree was had requiring your petitioner to pay the sum of \$28,510.59, with interest on \$13,680.32, from the twelfth day of July last. And your petitioner shows that every effort will be made to execute said decree, and if the designs of those interested in enforcing it can be effected, every vestige of the property of your petitioner and of his surety will be swept from them, and the grossest outrage and injustice perpetrated under the forms of law.

Your petitioner most solemnly avers that from the inception of the said suit until about the 23rd of January, 1854, he had no notice in fact, that any such suit had been brought or was likely to be brought against him, so that the decree was a complete surprise upon him, and has been obtained in consequence of a misapprehension and mistake, against which in conscience and common honesty he ought to be relieved. In all matters connected with the

estate of Mr. Cramphin, your petitioner has from the start consulted with and acted under the advice of counsel, being uninformed himself and anxious to discharge strictly and faithfully the duties assumed by him, and upon the day after the service of the writ, he went to Rockville, and calling upon a member of the bar, a gentleman of acknowledged repute and standing, who had for years been his counsel, and in whom he had the most unlimited confidence, informed him that a Chancery summons, the nature and purport of which he did not understand, had been served upon him. This gentleman promptly and confidently replied in substance as follows: Give yourself no uneasiness about it; it is a writ issued upon a bill filed by me for Duffy to validate his deed, and to which as a matter of form you are a party. I will attend to it for you. Aware of the fact that Duffy had purchased from George Calvert a part of Cramphin's real estate, that there was a difficulty about his title, that as devisee or legatee under Cramphin's will he might be a necessary party to any suit instituted by Duffy to secure such title, and relying implicitly upon the assurances of his counsel, so promptly and confidently given, he returned home, satisfied that he had done all that was or could be required of him in obedience to the process of law, and remained in utter ignorance of said suit until on or about the 23d of January last, when its true character and position were fully disclosed to him.

And as a further ground for such security and confidence on his part, and as accounting for the mistake into which his counsel fell, your petitioner shows, first, that a suit had in fact been instituted by Duffy, which was then pending and to which he was a party defendant, but no writ issued therein had at that time or has at any time since been served upon him, and in fact but one Chancery summons has at any time been served upon him and to that he attended promptly in manner aforesaid; secondly, he has never accounted finally in the orphans court, the tribunal ordinarily resorted to in the first instance; and thirdly, that a suit had been instituted upon his bond in Montgomery county court, to obtain a settlement of his accounts and to accomplish precisely, in so far as he is concerned, the same objects as are aimed at in the chancery case. Your petitioner avers that he has been always anxious and ready to account and has been constantly expecting to account in one or other of the courts in Montgomery county, and while thus prepared and expecting to account there, neither he nor his counsel having the slightest suspicion or reason to suspect that he would be called on to account elsewhere, and his counsel expecting that your petitioner would be summoned in a suit known by him to be depending in Chancery, it is submitted that the mistake, resulting so unfortunately for him, is susceptible of easy and natural explanation. And your petitioner alleges that the delay in settling his accounts in Montgomery has arisen from circumstances beyond his control, and charges that he has ever submitted to the guidance of counsel better informed than himself as to the course which he should pursue, and reiterates the averment that he has ever been ready and anxious to enter upon a fair and proper adjustment of his accounts.

Your petitioner desires to advert to other facts, operating to keep

him and his counsel in utter ignorance of the said chancery suit, which entitle him to the favorable consideration of your honorable body. The commissions to take testimony in the case were issued to Baltimore and Annapolis, although the evidence was to be obtained from records in Montgomery and from witnesses residing there. The counsel for the plaintiff in the suit upon the bond of your petitioner, instituted to settle the very account involved in the chancery case, goes from Rockville to Baltimore and proves the receipt of large sums of money by your petitioner, and although aware of the *exparte* character of the proceeding; aware of the suit upon the bond and its object; aware that your petitioner was justly entitled to large credit, and being in frequent and almost daily, intercourse with the counsel for your petitioner at Rockville, he fails to apprise him of that chancery case. The counsel for the complainant in the chancery case, after its institution, argued an appeal from a judgment rendered in the suit upon the bond, with your petitioner's counsel in that suit, and failed to apprise him of that chancery case. And finally, the bill is dismissed as to sisters of your petitioner, parties defendant with him, in order to facilitate a final decree. Whereas if the writ had been prosecuted to service upon them, your petitioner's attention would have been again directed to the subject and he might have been able to give due attention to the suit.

And to show the gross injustice which will be done to your petitioner by the execution of the said decree, he avers and charges that so far from owing the sum of money, payment of which is required of him thereby, or any sum of money at all, he verily believes that the estate of Thomas Cramphin has been overpaid by and is in fact indebted to him. Your petitioner holds written receipts and vouchers for payments on account of said estate amounting in the aggregate to nearly thirty thousand dollars, and ranging from twenty-five cents to some four thousand dollars, for not one cent of which has he heretofore received credit. And without troubling your honorable body with details of his accounts, he again asserts, that upon a full and fair accounting, charging all his receipts and crediting payments and just allowances to which he is entitled, instead of being indebted he will be found to have overpaid said estate.

Your petitioner shows that he has applied to the counsel for the parties entitled to whatever money may be recovered under said decree for his consent that the decree may be opened in order to an equitable adjustment of his accounts; but has been coolly notified that they stand upon the defensive, and no doubt every effort to enforce the decree to the uttermost farthing will be made. Failing in this reasonable request your petitioner has filed his application in the chancery case to open the decree upon the grounds stated in this petition and upon other reasons, tendering his answer and offer to account forthwith upon such terms as the Chancellor may prescribe, which application stands for hearing^d on the 2nd day of March next, but your petitioner has been advised that the Chancellor may consider himself bound by some rigid and inflexible rule of Law, proper to be enforced as a general rule, but operating hardly if applied in this instance, and refuse the prayer of your petitioner, though satisfied of the justice of the case.

He therefore prays your honorable body to take this his petition into favorable consideration and to pass an act for his relief, authorizing the Chancellor, upon such terms as to him may seem right, to open said decree, if justice will in his judgment be promoted thereby, and to permit your petitioner to account in all respects as if he had appeared to the original bill and duly filed his answer thereto, or in such manner as may be right, your petitioner desiring to account fully, fairly and conscientiously; avoiding all technical defences and doing justly in the sight of God and man. And as, &c.

RICHARD WILLIAMS.



